THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1642 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT INSECTICIDES LTD. & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
M/S TRIVEDI & GUPTA for Applicant(s) : 1 - 3.
MR PD BHATE ADDL PUBLIC PROSECUTOR for Respondent : 1 Absent
RULE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/10/2006

ORAL JUDGMENT

1. The petitioners have approached this Court under section 482 of the Code of Criminal Procedure, 1973 with the prayer to quash the complaint filed by respondent No.2 in the Court

of the learned Judicial Magistrate, First Class at Ankleshwar and registered as Criminal Case No.3364 of 1992. None is present for the respondents, though served; and none of the averments made in the petition are controverted by filing any affidavit-in-reply by any of the respondents.

2. Going through the impugned complaint, apparently, the complainant, a Government Labour Officer, has alleged against petitioner No.2 that an employee was transferred from one shift to another without issuance of notice and thereby the respondent concerned had violated the provisions of the Model Standing Order No.10 (1) (c) which act was punishable under section 13 of the Industrial Employment (Standing Orders) Act, 1946. The said clause 10 of the Standing Orders, as reproduced in the petition, reads as under:-

> *"10(1)(a) More than one shift may be worked in a department or section of a department at the discretion of the Manager;*
>
> *(b) If more than one shift is worked in the establishment, workmen shall be liable to be transferred from one shift to another;*

(c) Whenever an additional shift is started or shifts are altered or discontinued, a fifteen day's notice shall be given to the workmen but if as a result of the discontinuance of the shift any permanent workman is likely to be discharged, a notice of two months shall be given.

(d) ... ...
(e) ... ...”

3. In view of the allegation made in the complaint and the above provisions of the Model Standing Orders, it was argued by the learned counsel for the petitioner that, obviously, no offence was made out or disclosed in the complaint. Besides that, no allegation implicating the petitioner No.2, who was joined as the sole accused person, was found in the complaint even as the complaint disclosed the designation of the respondent to be that of Managing Director. Thus, without any specific allegation against the Managing Director of the company, he was implicated as an accused person without disclosing any offence in the complaint and that amounted to abuse of the process of Court, according to the submission.

4. It was seen from the uncontroverted averments made in the petition and the correspondence preceding the complaint that a dispute about the working shift of an individual employee was raised and notice dated 14.10.1991 in that regard was issued by the complainant. That notice was replied on the next day with the clarification that the establishment of the respondent had not made any change by introducing additional shift, nor had they altered or discontinued any shift and hence the provisions for issuing notice of 15 days did not apply. However, the criminal complaint in question was filed and prosecution was launched against the petitioner.

5. Bare reading of the relevant provisions of the Model Standing Orders reveals that the Standing Order No.10 expressly permits transfer of a workman from one shift to another. It is only when an additional shift is started or the shifts are altered or discontinued that the notice contemplated in clause (c) has to be issued. Therefore, the provisions regarding issuance of notice are not applicable in the present case. The complaint in Criminal Case No.3364 of 1992 was, *ex facie*, devoid of any substance and merit and the prosecution pursuant

thereto could only be meaningless and infructuous. Therefore, the petition is required to be allowed. Accordingly, the petition is allowed and the criminal complaint at Annexure-A as also the proceedings of Criminal Case No.3364 of 1992 pending in the Court of the learned Judicial Magistrate, First Class at Ankleshwar are quashed. Rule is made absolute with no order as to costs.

(D.H.Waghela, J.)

(KMG Thilake)